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**The Honorable Thomas O. Rice**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

JENNIFER TECCA, a married female,

Plaintiff,

vs.

FRED MEYER STORES, INC., an  
Ohio corporation, registered and doing  
business in Washington; THE  
KROGER CO., an Ohio corporation,  
registered and doing business in  
Washington; each of them d/b/a FRED  
MEYER,

Defendants.

NO. 2:23-CV-0168-TOR

STIPULATED PROTECTIVE  
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Fed. R. Civ. P. 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged, including any ESI pertaining to these subject areas, that is not publicly available, and kept secret and private by the Parties:

- Plaintiff’s medical records and related personal medical information;
- Employee personal information including, but not limited to, Social Security numbers, birth date and birth month, payroll and salary, tax information/returns;

- 1           • Defendants' confidential and proprietary customer and vendor  
2           information including, but not limited to, customer and vendor lists,  
3           contracts and/or agreements, marketing and sales policies and  
4           procedures;
- 5           • Defendants' confidential and proprietary business information or  
6           materials, including, but not limited to, correspondence and  
7           communications; internal decisions, practices, policies, processes, and  
8           procedures; business and marketing plans; employee payroll and salary;  
9           inventory reports; licensee information; handbooks and policy  
10          manuals; training materials and procedures, and confidential  
11          agreements and contracts;
- 12          • Defendants' confidential and proprietary financial records, including  
13          but not limited to, balance sheets, income statements, cash flow  
14          statements, sales reports and data, accounting records, and profit and  
15          loss statements;
- 16          • Defendants' confidential and proprietary information related to their  
17          business practices and procedures, including but not limited to, policy  
18          planning and implementation; product design, manufacturing, and/or  
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1 sales information; trade secrets and/or competitively sensitive technical  
2 and scientific information, products, and methods; and

- 3 • Defendants' confidential and proprietary information related to their  
4 asset protection policies and procedures.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential  
7 material (as defined above), but also (1) any information copied or extracted from  
8 confidential material; (2) all copies, excerpts, summaries, or compilations of  
9 confidential material; and (3) any testimony, conversations, or presentations by  
10 parties or their counsel that might reveal confidential material.

11 However, the protections conferred by this agreement do not cover  
12 information that is in the public domain or becomes part of the public domain  
13 through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

15 4.1 Basic Principles. A receiving party may use confidential material that  
16 is disclosed or produced by another party or by a non-party in connection with this  
17 case only for prosecuting, defending, or attempting to settle this litigation.  
18 Confidential material may be disclosed only to the categories of persons and under  
19 the conditions described in this agreement. Confidential material must be stored and  
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1 maintained by a receiving party at a location and in a secure manner that ensures that  
2 access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
4 otherwise ordered by the court or permitted in writing by the designating party, a  
5 receiving party may disclose any confidential material only to:

6 a) the receiving party’s counsel of record in this action, as well as  
7 employees of counsel to whom it is reasonably necessary to disclose the information  
8 for this litigation;

9 b) the officers, directors, and employees (including in house  
10 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
11 litigation, unless the parties agree that a particular document or material produced is  
12 for Attorney’s Eyes Only and is so designated;

13 c) experts and consultants to whom disclosure is reasonably  
14 necessary for this litigation and who have signed the “Acknowledgment and  
15 Agreement to Be Bound” (Exhibit A);

16 d) the court, court personnel, and court reporters and their staff;

17 e) copy or imaging services retained by counsel to assist in the  
18 duplication of confidential material, provided that counsel for the party retaining the  
19 copy or imaging service instructs the service not to disclose any confidential material  
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1 to third parties and to immediately return all originals and copies of any confidential  
2 material;

3 f) during their depositions, witnesses in the action to whom  
4 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating  
6 party or ordered by the court. Pages of transcribed deposition testimony or exhibits  
7 to depositions that reveal confidential material must be separately bound by the court  
8 reporter and may not be disclosed to anyone except as permitted under this  
9 agreement;

10 g) the author or recipient of a document containing the information  
11 or a custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing confidential material or  
13 discussing or referencing such material in court filings, the filing party shall confer  
14 with the designating party, to determine whether the designating party will remove  
15 the confidential designation, whether the document can be redacted, or whether a  
16 motion to seal or stipulation and proposed order is warranted. During the meet and  
17 confer process, the designating party must identify the basis for sealing the specific  
18 confidential information at issue, and the filing party shall include this basis in its  
19 motion to seal, along with any objection to sealing the information at issue.

1     5.     DESIGNATING PROTECTED MATERIAL

2             5.1     Exercise of Restraint and Care in Designating Material for Protection.

3     Each party or non-party that designates information or items for protection under  
4     this agreement must take care to limit any such designation to specific material that  
5     qualifies under the appropriate standards. The designating party must designate for  
6     protection only those parts of material, documents, items, or oral or written  
7     communications that qualify, so that other portions of the material, documents,  
8     items, or communications for which protection is not warranted are not swept  
9     unjustifiably within the ambit of this agreement.

10            Mass, indiscriminate, or routinized designations are prohibited. Designations  
11     that are shown to be clearly unjustified or that have been made for an improper  
12     purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
13     to impose unnecessary expenses and burdens on other parties) expose the  
14     designating party to sanctions.

15            If it comes to a designating party's attention that information or items that it  
16     designated for protection do not qualify for protection, the designating party must  
17     promptly notify all other parties that it is withdrawing the mistaken designation.

18            5.2     Manner and Timing of Designations. Except as otherwise provided in  
19     this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise  
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1 stipulated or ordered, disclosure or discovery material that qualifies for protection  
2 under this agreement must be clearly so designated before or when the material is  
3 disclosed or produced.

4 a) Information in documentary form: (e.g., paper or electronic  
5 documents and deposition exhibits, but excluding transcripts of depositions or other  
6 pretrial or trial proceedings), the designating party must affix the word  
7 “CONFIDENTIAL” to each page that contains confidential material. If only a  
8 portion or portions of the material on a page qualifies for protection, the producing  
9 party also must clearly identify the protected portion(s) (e.g., by making appropriate  
10 markings in the margins).

11 b) Testimony given in deposition or in other pretrial proceedings:  
12 the parties and any participating non-parties must identify on the record, during the  
13 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
14 their right to so designate other testimony after reviewing the transcript. Any party  
15 or non-party may, within fifteen days after receiving the transcript of the deposition  
16 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,  
17 as confidential. If a party or non-party desires to protect confidential information at  
18 trial, the issue should be addressed during the pre-trial conference.



1 c) Other tangible items: the producing party must affix in a  
2 prominent place on the exterior of the container or containers in which the  
3 information or item is stored the word “CONFIDENTIAL.” If only a portion or  
4 portions of the information or item warrant protection, the producing party, to the  
5 extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
7 failure to designate qualified information or items does not, standing alone, waive  
8 the designating party’s right to secure protection under this agreement for such  
9 material. Upon timely correction of a designation, the receiving party must make  
10 reasonable efforts to ensure that the material is treated in accordance with the  
11 provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a  
14 designation of confidentiality at any time. Unless a prompt challenge to a  
15 designating party’s confidentiality designation is necessary to avoid foreseeable,  
16 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
17 delay of the litigation, a party does not waive its right to challenge a confidentiality  
18 designation by electing not to mount a challenge promptly after the original  
19 designation is disclosed.

1           6.2   Meet and Confer. The parties must make every attempt to resolve any  
2 dispute regarding confidential designations without court involvement. Any motion  
3 regarding confidential designations or for a protective order must include a  
4 certification, in the motion or in a declaration or affidavit, that the movant has  
5 engaged in a good faith meet and confer conference with other affected parties in an  
6 effort to resolve the dispute without court action. The certification must list the date,  
7 manner, and participants to the conference. A good faith effort to confer requires a  
8 face-to-face meeting or a telephone conference.

9           6.3   Judicial Intervention. If the parties cannot resolve a challenge without  
10 court intervention, the designating party may file and serve a motion to retain  
11 confidentiality under LCivR 7. The burden of persuasion in any such motion shall  
12 be on the designating party. Frivolous challenges, and those made for an improper  
13 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other  
14 parties) may expose the challenging party to sanctions. All parties shall continue to  
15 maintain the material in question as confidential until the court rules on the  
16 challenge.

1     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
2             IN OTHER LITIGATION

3             If a party is served with a subpoena or a court order issued in other litigation  
4     that compels disclosure of any information or items designated in this action as  
5     “CONFIDENTIAL,” that party must:

6             a)     promptly notify the designating party in writing and include a  
7     copy of the subpoena or court order;

8             b)     promptly notify in writing the party who caused the subpoena or  
9     order to issue in the other litigation that some or all of the material covered by the  
10    subpoena or order is subject to this agreement. Such notification shall include a copy  
11    of this agreement; and

12            c)     cooperate with respect to all reasonable procedures sought to be  
13    pursued by the designating party whose confidential material may be affected.

14    8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15            If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
16    confidential material to any person or in any circumstance not authorized under this  
17    agreement, the receiving party must immediately (a) notify in writing the designating  
18    party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
19    unauthorized copies of the protected material, (c) inform the person or persons to  
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1 whom unauthorized disclosures were made of all the terms of this agreement, and  
2 (d) request that such person or persons execute the “Acknowledgment and  
3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
5 PROTECTED MATERIAL

6 When a producing party gives notice to receiving parties that certain  
7 inadvertently produced material is subject to a claim of privilege or other protection,  
8 the obligations of the receiving parties are those set forth in Fed. R. Civ. P.  
9 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
10 established in an e-discovery order or agreement that provides for production  
11 without prior privilege review. The parties agree to the entry of a non-waiver order  
12 under Fed. R. Evid. 502(d) as set forth herein.

13 10. NON TERMINATION AND RETURN OF DOCUMENTS

14 Within 60 days after the termination of this action, including all appeals, each  
15 receiving party must return all confidential material to the producing party, including  
16 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
17 appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival  
19 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
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1 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
2 and consultant and expert work product, even if such materials contain confidential  
3 material.

4       The confidentiality obligations imposed by this agreement shall remain in  
5 effect until a designating party agrees otherwise in writing or a court orders  
6 otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 6, 2023.

s/ Scott A. Gingras

Scott A. Gingras, WSBA #43886  
*Attorney for Plaintiff*

DATED: November 6, 2023.

s/ Elisha S. Smith

Shawna M. Lydon, WSBA #34238  
Elisha S. Smith, WSBA #29210  
*Attorney for Defendant*

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: November 17, 2023.



A handwritten signature in blue ink that reads "Thomas O. Rice".

The Honorable Thomas O. Rice  
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Eastern  
District of Washington on \_\_\_\_\_ in the case of *Tecca v. Fred  
Meyer Stores, Inc., et al.*, Case No. 2:23-cv-00168-TOR. I agree to comply with and  
to be bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment  
in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any  
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Eastern District of Washington for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_